IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 11/2006

Sertorio S. Facho,
House No.C-1/132,
Near Head Post Office,
D. Joao de Castro Road.
Panjim, Goa, 403 001. ..... Petitioner.

Vs.

Dr. Fernando Jorge Colaso,
Advocate and Notary,
104, Manguirish Chambers,
1st Floor, 18th June Road, Panjim. ..... Respondent.

Petitioner in person.

Ms. Teresa Colaco, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 23RD NOVEMBER, 2006.

ORAL JUDGMENT :

Heard the petitioner in person and the learned Counsel for the respondent.

2. The petitioner-plaintiff has filed this revision application under Section 115 of the Code of Civil Procedure against the order passed by the

Civil Judge, Sr. Division, Panaji restraining him from causing any harassment to the defendant-respondent and his colleagues with direction that he shall not file any frivolous suit or proceedings, failing which he would be dealt with under the Law of Contempt.

3. After hearing both the parties, it is apparent that the present petitioner filed the suit for damages against the defendant for defamation. The suit is pending in the trial Court and we are not concerned with the factual aspect involved in the said suit. In the said suit, the defendant filed an application for temporary injunction against the plaintiff restraining him from filing frivolous proceedings against the defendant. It appears that the learned trial Judge has taken stock of all the said proceedings and the alleged attitude of the petitioner herein.

4. The petitioner is heard in person. He has filed his summary of arguments and has submitted that no such application for temporary injunction could be filed which was not connected with the matter dealt with in the suit. In support of his said submission, the plaintiff has relied upon the Apex Court Judgment in the case of ***The State of Orissa vs. Madan Gopal Rungta,*** AIR (39)1952 SC 12, wherein it is observed that an interim relief can be granted only in aid of and as ancillary to the main

relief which may be available to the party on final determination of his rights in suit or proceeding. According to the plaintiff, the temporary injunction is granted under Section 151 of the Civil Procedure Code and, therefore, it was not legal on the part of the trial Court to entertain the said application.

5. Be that as it may, the fact remains that the present revision, by virtue of the proviso introduced by the Amendment of 2002 to Section 115 of the Code of Civil Procedure, would not be maintainable and proper remedy for the petitioner would be elsewhere, if at all he wants to pursue the said remedy.

6. In view of this aspect, I am not inclined to entertain this revision application as it is not maintainable under Section 115 of the C.P. Code and, therefore, it stands dismissed. Rule is discharged. No order as to costs. Rule stands discharged.

P.V. KAKADE, J.

ssm.